

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE
ATTORNEY GENERAL



MICHAEL A. DELANEY
DEPUTY ATTORNEY GENERAL

August 5, 2005

Section 5 Submission

Chief, Voting Section
Civil Rights Division
Room 7254 – NWB
Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20006

Re: Submission Under Section 5 of the Voting Rights Act for:

New Hampshire Revised Statute Annotated ("RSA") 654:18, a STATUTE related to the forwarding of voter registration form and absentee registration affidavit, most recently amended by Laws of 1995 Chapter 124 and previously amended by the chapters cited below.

Dear Voting Section Chief:

Pursuant to 42 U.S.C. § 1973 (c), the State of New Hampshire, through the Office of the New Hampshire Attorney General, hereby submits RSA 654:18, a STATUTE related to the forwarding of voter registration form and absentee registration affidavit, most recently amended by Laws of 1995 Chapter 124 and previously amended by the chapters cited below.

SUBMISSION:

In accordance with 28 C.F.R. § 51.27, the submission is as follows:

- a) Chapter 124 (1995) amending RSA 654:18 is attached. (Exhibit 654:18 A)
- b) Chapter 436 (1979) recodifying RSA 55:25 as RSA 654:18 is attached. (Exhibit 654:18 B)
- c) The changes made by amendments to RSA 654:18 are as follows:

1. Chapter 124 (1995) amends this statute as follows:
 - a. Insert the phrase “...*and the*...” for grammatical correctness in the first sentence
 - b. Remove the phrase “...*and certificates*...” from the first sentence following the word “...*affidavit*...”
 2. Chapter 436 (1979) recodified RSA 55:25 as RSA 654:18.
- d) This submission is made by: Senior Assistant Attorney General Orville B. Fitch II, 33 Capitol Street, Concord, New Hampshire 03301, Phone: (603) 271-1238.
 - e) The submitting authority is New Hampshire Attorney General, Kelly A. Ayotte for the State of New Hampshire.
 - f) Not applicable.
 - g) The changes for which pre-clearance is sought were made by a decision of the New Hampshire General Court (Legislature).
 - h) In accordance with Amendment X of the U.S. Constitution, the New Hampshire General Court, the State’s legislature, acting pursuant to the New Hampshire Constitution Part Second, Article 2, granting supreme legislative power within the state to the House and Senate, who with right to negate each other are granted power to make law through Part Second, Article 5. Additional authority regarding election law is vested in Part First, Article 11.

The legislature through a bicameral process passed law to create Chapter 124 (Exhibit 654:18 A). The bill was signed into law (without the signature of the Governor) on May 17, 1995, pursuant to New Hampshire Constitution Part Second, Article 44.

- i) Adoption dates:
 1. Chapter 124 (1995) adopted May 17, 1995
 2. Chapter 436 (1979) adopted June 25, 1979
- j) Effective dates:
 1. Chapter 124 (1995) effective July 16, 1995

2. Chapter 436 (1979) effective July 1, 1979
 - k) The changes have been enforced.
 - l) The changes affect the entire State of New Hampshire.
 - m) The purpose for the changes are as follows:
 1. The purpose of the Chapter 124 (1995) change is to remove the requirement that an absentee registration certificates be forwarded to the applicant by the proper official (and correct for grammar following that removal). The effect is to require that only a voter registration form and an absentee registration affidavit be forwarded to the absentee applicant for voter registration.
 2. The purpose of the Chapter 436 (1979) change is to recodify RSA 55:25 as RSA 654:18.
 - n) These changes do not negatively target any protected class under section 5 of the Voting Rights Act of 1965. 42 U.S.C. § 1973 (c). They are expected to have neutral impact and do not meet the test of retrogression defined in *Reno v. Bossier Parish Sch. Bd*, 520 U.S. 471, 478 (1997). “(T)he ability of minority groups ... to elect their choices to office” will not be diminished. *Beer v. U.S.*, 425 U.S. 130, 141 (1976).
 - o) None known.
 - p) RSA 654:18 was precleared through 1979 on June 22, 2004 by D.O.J. file numbers 2004-2563, 2004-2581 and 2004-2582. A copy of this preclearance is attached as Exhibit 654:18 C. This submission seeks preclearance of all subsequent changes.
 - q) Not applicable as this is not a redistricting plan.
 - r) Exhibit 654:18 D is a copy of a Press Release of this submission, its availability, and inviting comment to federal Department of Justice.

I expect the foregoing information is sufficient to enable the United States Attorney General to make the required determination pursuant to Section 5 of the Voting Rights Act. If further information is required or would be helpful, please contact me.

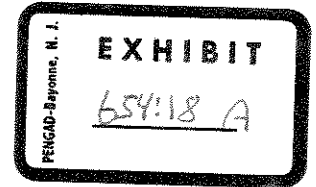
Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read 'Orville B. Fitch II', is written over the typed name and title.

Orville B. Fitch II
Senior Assistant Attorney General
Civil Bureau
(603) 271-1238
bud.fitch@doj.nh.gov

87931.doc

15march95.....1582h

HOUSE BILL - FINAL VERSION

1995 SESSION 0762L

95-0724

10/08

HOUSE BILL 409

AN ACT relative to absentee voter registration.

SPONSORS: Rep. M. Fuller Clark, Rock 31; Rep. Holden, Hills 14; Sen. Pignatelli, Dist 13; Sen. Cohen, Dist 24

COMMITTEE: Constitutional and Statutory Revision

AMENDED ANALYSIS

This bill amends the absentee voter registration process by replacing the certificate and notary requirement on the absentee registration affidavit with a requirement that the affidavit be affirmed and signed by a witness.

EXPLANATION: Matter added to current law appears in **bold italics**.

Matter removed from current law appears in [brackets].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

15march95.....1582h

CHAPTER 124

HOUSE BILL - FINAL VERSION

0762L

95-0724

10/08

HB 409

STATE OF NEW HAMPSHIRE

In the year of Our Lord

One Thousand Nine Hundred and Ninety-Five

AN ACT

relative to absentee voter registration.

Be it Enacted by the Senate and House of

Representatives in General Court convened:

124:1 Absentee Registration Affidavit. Amend RSA 654:17 to read as follows:

654:17 Absentee Registration Affidavit.

I. The absentee registration affidavit shall be prepared by the secretary of state and shall be in substantially the following form:

Affidavit (Absence from town)

I,, do hereby [depone as follows] **swear or affirm, under penalty of perjury, the following:**

1)(a) That my legal domicile is in the town of, New Hampshire, I will be of the age of 18 years or over on election day and am entitled to vote in the election to be held in said town on, 19...., except for the fact that my name does not appear on the checklist to be used in said town at such election;

(b) That if I were personally to appear before the supervisors of the checklist of said town in their regular session for the correction of the checklist for said election, I would present the following as proof of domicile (including but not limited to a drivers license, electric bill, passport, or cancelled check);

2) That I do not intend to be present within said town at such time prior to said election as shall enable me personally to appear before the supervisors of the checklist of said town in their regular sessions for the correction of the checklist for said election;

3) That I am temporarily residing in

(city and state or city, province and country); and

4) That I hereby make application for the addition of my name to the checklist of said town to be used at said election.

.....

Signature of Applicant

.....
Date

Affidavit (Physical Disability)

I,, do hereby [depone as follows] **swear or affirm, under penalty of perjury, the following:**

1)(a) That my legal domicile is in the town of, New Hampshire, I will be of the age of 18 years or over on election day and am entitled to vote in the election to be held in said town on, 19...., except for the fact that my name does not appear on the checklist to be used in said town at such election;

(b) That if I were personally to appear before the supervisors of the checklist of said town in their regular session for the correction of the checklist for said election, I would present the following as proof of domicile (including but not limited to a drivers license, electric bill, passport, or cancelled check);

2) That I am unable by reason of physical disability personally to appear before the supervisors of the checklist of said town in their regular sessions for the correction of the checklist for said election;

3) That I hereby make application for the addition of my name to the checklist of said town to be used at said election.

.....
 Signature of Applicant

II. There shall be printed below each of the foregoing affidavits the following [certificate] **affirmation:**

[Certificate] Affirmation

I,, the undersigned [officer] **witness**, do hereby [certify] **swear or affirm, under penalty of perjury**, that on the day of, 19...., the above named,, having satisfied me as to his identity, [subscribed] **signed** the foregoing affidavit in my presence, and did before me swear to (or affirm) the truth of the statements therein contained.

.....
 Signature of [Officer] **Witness**

[.....]

[Title]

124:2 Forwarding Absentee Registration Affidavit. Amend RSA 654:18 to read as follows:

654:18 Forwarding. The voter registration form[,] **and the** absentee registration affidavit [and certificates] shall be forwarded directly to the applicant by the city or town clerk or by the secretary of state.

124:3 Execution of Absentee Registration Affidavit. Amend RSA 654:19 to read as follows:

654:19 [Execution;] Submission; Effect. The [absentee registration affidavit shall be executed before a person authorized to perform notarial acts pursuant to the provisions of RSA 456-A. Such officer, after executing the certificate, shall attach thereto proof of his official capacity and]

applicant shall forward the **absentee registration** affidavit and [certificate along with] the applicant's voter registration form to the clerk of the town or city named for submission to the supervisors of the checklist. If the supervisors find that the affidavit and [certificate] **the voter registration form** are properly executed, they shall follow the procedure for applications made in person as provided in RSA 654:11, 654:13, and 654:15, **except that in the case of an absentee voter they shall accept an absentee registration affidavit and a registration form.** An affidavit [and a certificate] which [are] is properly executed shall be considered valid and shall be effective for both a primary and a general election for armed services voters and for absent voters who reside outside the continental United States.

124:4 Effective Date. This act shall take effect 60 days after its passage.

Approved: "Enacted in accordance with Article 44, Pt. II of N.H.

Constitution, without signature of Governor, May 17, 1995."

Effective: July 16, 1995

2
81:57

1. N. 1000-44-000000

Proof of domicile in the form of an affidavit declaring that the applicant has a domicile and intends to maintain a domicile for an indefinite period in the city or ward in which he desires to vote; and any other evidence they may request. Supervisors may refuse to add the name of an applicant to the list if he fails to present the evidence required by this section.

Action by Supervisors.

I. If the supervisors decide to add the name of the applicant to the checklist, then they shall retain the original of the triplicate registration form for their own file, forward one copy to the supervisors of the checklist of the city or town of the applicant's last voting address if said address is in the state of New Hampshire, and send another copy to the clerk of their town or city.

II. If the supervisors decide not to add the name of the applicant to the checklist, they shall send notification in writing to the applicant within 7 days stating the reason for the denial. They shall write the word "REJECTED" and the date of rejection across the registration form. They shall retain the original in a separate file for proof that such an application was made.

654:14 Complaint to Superior Court. Any applicant may file, as provided in RSA 654:42, a complaint with the superior court stating that his name has been illegally kept from the checklist and asking to have his name added thereto for the reasons stated in the complaint.

654:15 Party Registration. Whenever names are added to the checklist, the supervisors shall register the party membership of the voter if he desires such membership registered; but, if such voter has already been registered in any town or ward in this state as a member of any party, he shall not be registered as a member of a different party closer in time to the primary than the day immediately prior to the first day for the filing of a declaration of candidacy. The party membership of each voter may be registered by writing in ink, printing, or rubber stamping after the name of such voter the first 3 letters of the name of the party with which he registers.

Absentee Voter Registration

654:16 Applicability. Any person who has his domicile in any town or city in this state and is qualified to vote therein at the next subsequent election to be held in said town or city except for the fact that his name does not appear on the checklist to be used at the election, and who is temporarily absent therefrom or who by reason of physical disability is unable to attend a meeting of the supervisors of the checklist, may cause his name to be added to such checklist by applying to the city or town clerk or the secretary of state for a voter registration form provided for in RSA 654:7 and an appropriate absentee registration affidavit provided for in RSA 654:17.

654:17 Absentee Registration Affidavit.

I. The absentee registration affidavit shall be prepared by the secretary of state and shall be in substantially the following form:

Affidavit (Absence from Town)

I, _____, do hereby depose as follows:

1) That my legal domicile is in the town of _____, New Hampshire, I will be of the age of 18 years or over on election day and am entitled to vote in the election to be held in said town on _____, 19____, except for the fact that my name does not appear on the checklist to be used in said town at such election;

2) That I do not intend to be present within said town at such time prior to

said election as shall enable me personally to appear before the supervisors of the checklist of said town in their regular sessions for the correction of the checklist for said election;

3) That I am temporarily residing in _____ (city and state or city, province and country); and

4) That I hereby make application for the addition of my name to the checklist of said town to be used at said election.

Signature of Applicant

Affidavit (Physical Disability)

I, _____, do hereby depose as follows:

1) That my legal domicile is in the town of _____, New Hampshire, I will be of the age of 18 years or over on election day and am entitled to vote in the election to be held in said town on _____, 19____, except for the fact that my name does not appear on the checklist to be used in said town at such election;

2) That I am unable by reason of physical disability personally to appear before the supervisors of the checklist of said town in their regular sessions for the correction of the checklist for said election;

3) That I hereby make application for the addition of my name to the checklist of said town to be used at said election.

Signature of Applicant

II. There shall be printed below each of the foregoing affidavits the following certificate:

Certificate

I, _____, the undersigned officer, do hereby certify that on the _____ day of _____, 19____, the above named _____, having satisfied me as to his identity, subscribed the foregoing affidavit in my presence, and did before me swear to (or affirm) the truth of the statements therein contained.

Signature of Officer

Title

654:18 Forwarding. The voter registration form, absentee registration affidavit and certificates shall be forwarded directly to the applicant by the city or town clerk or by the secretary of state.

654:19 Execution; Submission; Effect. The absentee registration affidavit shall be executed before a person authorized to perform notarial acts pursuant to the provisions of RSA 456-A. Such officer, after executing the certificate, shall attach thereto proof of his official capacity and shall forward the affidavit and certificate along with the applicant's registration form to the clerk of the town or city named for submission to the supervisors of the checklist. If the supervisors find that the affidavit and certificate are properly executed, they shall follow the procedure for applications made in person as provided in RSA 654:11, 654:13, and 654:15.

Overseas Citizens Voting: Federal Elections Only

654:20 Affidavit; Certificate.

I. Any person qualified to vote as an overseas voter in a city or town as



U.S. Department of Justice

Civil Rights Division

PENGAD 800-631-6989

EXHIBIT

654:18 C

JDR:RPL:SMC:jdh
DJ 166-012-3
2004-2563
2004-2581
2004-2582

*Voting Section - NWB
950 Pennsylvania Avenue, N.W.
Washington, DC 20530*

June 22, 2004

Orville B. Fitch II, Esq.
Assistant Attorney General
Civil Bureau
Department of Justice
33 Capitol Street
Concord, New Hampshire 03301-6397

Dear Mr. Fitch:

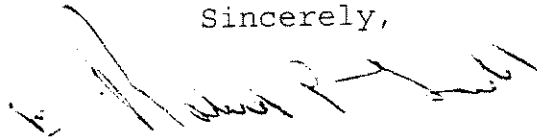
This refers to Session Law Chapter 436 (HB 575) (1979), which recodifies the election laws of the State of New Hampshire; Session Law Chapter 266 (HB 577) (2003), which implements the Help America Vote Act of 2002 (HAVA), 42 U.S.C. 15301-15545; and the adoption of formal administrative procedures for the resolution of election law complaints, including complaints filed under Title III of HAVA, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on June 7, 2004.

The Attorney General does not interpose any objection to the specified changes. Regarding Session Law Chapter 266, we note that the act specifically amends the following provisions of the State's election laws: RSA 655:19, II (Chapter 387 (1991)) (to provide for the deposit of certain candidate filing fees collected by the secretary of state into the election fund); RSA 655:19-c (Chapter 387 (1991)) (to provide for the deposit of any administrative assessments paid to the secretary of state into the election fund); RSA 664:3, I (Chapter 351 (1997)) (to provide for the deposit of political committee registration fees paid to the secretary of state into the election fund); RSA 664:21, II (Chapter 351 (1997)) (to provide for the deposit of any administrative fines for violations of the State's campaign finance laws into the election fund); and RSA 665:7 (Chapter 436 (1979)) (to authorize the Ballot Law Commission to hear and resolve complaints alleging violations of Title III of HAVA, as specified).

We note also that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41 and 51.43).

Session Law Chapter 266 includes provisions that are enabling in nature. Therefore, the State is not relieved of its responsibility to seek Section 5 preclearance of any changes affecting voting proposed to be implemented pursuant to this legislation (e.g., creation of a centralized statewide voter registration database by the secretary of state and guidelines issued by the secretary of state implementing the database). See 28 C.F.R. 51.15.

Sincerely,

A handwritten signature in dark ink, appearing to read "Joseph D. Rich", written over a horizontal line.

Joseph D. Rich
Chief, Voting Section

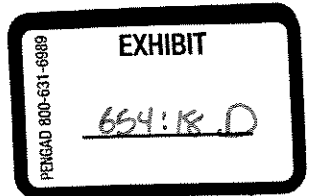
**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397



KELLY A. AYOTTE
ATTORNEY GENERAL

MICHAEL A. DELANEY
DEPUTY ATTORNEY GENERAL



News Release

RELEASED BY: Attorney General Kelly A. Ayotte

SUBJECT: Voting Rights Act – Submission of a request for preclearance of changes to New Hampshire Voting laws and procedures

DATE: June 10, 2005

RELEASE TIME: Immediate

Attorney General Kelly A. Ayotte announces the submission of requests for preclearance of changes made to the election laws in New Hampshire to the Federal Department of Justice. Preclearance submissions will address changes made to New Hampshire's election laws since jurisdictions in the State became subject to preclearance.

Ten New Hampshire towns are subject to section 5 of the federal Voting Rights Act. Changes to New Hampshire election laws that affect any of these ten towns must be submitted for review by either the Federal Department of Justice or the Federal District Court for Washington D.C. The federal Department of Justice will review the changes to New Hampshire's election laws to ensure that the changes do not have the effect of denying or abridging the right to vote on account of race or color, or membership in a language minority group. Changes to New Hampshire redistricting statutes have been submitted to, and approved by, the U.S. Justice Department since the 1980 census. Federal regulations require that the public be notified that the State has filed a request for preclearance and that the submission be available for public inspection.

Copies of each submission by the Attorney General for the State of New Hampshire are available at the office of the Attorney General at 33 Capitol Street, Concord New Hampshire, 03301. Each document will also be made available at the Attorney General's Office web site at:

<http://www.doj.nh.gov/elections/>

Attorney General Ayotte and the federal Department of Justice invite persons interested in this submission to submit comments and information, in writing or by telephone, to the Voting Section of the Federal Department of Justice, Civil Rights Division, at the earliest possible date to ensure that they may be considered during the preclearance review time period. Telephone 1-800-253-3931 or (202) 307-2385 or write Chief, Voting Section, Civil Rights Division, Room 7354 – NWB, Department of Justice, 950 Pennsylvania Ave., NW, Washington, DC 20530. The envelope and first page should be marked "Comment under section 5." Additional information on the Voting Rights Act and the preclearance process can be obtained at the web site of the Federal Department of Justice at:

<http://www.usdoj.gov/crt/voting/index.htm>

The New Hampshire Attorney General's Office Voting section can be contacted at:

<http://www.doj.nh.gov/elections/>
New Hampshire Toll Free 1-866-8868-3703
or 1-866-VOTER03
electionlaw@doj.nh.gov